IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 155/2006
(Shri Lal Singh Vs. Shri Shyam Lal & Anr.)

Date of Order : 27/07/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Umesh Shrimalee for the petitioner.
Mr. Ashok Upadhyay, public prosecutor.
Mr. Sudhir Saruparia for the non-petitioner No.1.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has assailed the order dated 12.12.2005 passed by Additional Sessions Judge, Nathdwara (for short 'the revisional court' hereinafter) whereby the revision petition filed by the petitioner against the order passed by Additional Chief Judicial Magistrate, Nathdwara (for short 'the trial court' hereinafter) dismissing the application dated 15..3.2005 filed by the petitioner seeking quashing of complaint, was dismissed. Aggrieved by the orders passed by the trial court as also the revisional court, the petitioner has filed the instant criminal misc. petition with the following prayer:-

> "It is, therefore, most humbly and respectfully prayed that this misc. petition may kindly be allowed and till final disposal of this misc. petition the further

> proceedings in the learned Judicial Magistrate, Nathdwara in original complaint No.423/2004 may kindly be stayed and the application filed by the petitioner dated 15.3.2005 may kindly be ordered to be allowed and the order dated 12.12.2005 passed by learned Addl. Sessions Judge, Nathdwara and the criminal proceedings pending before learned Judicial Magistrate Nathdwara may kindly be quashed and set aside. Any other relief which this Hon'ble Court may deems just and proper may kindly be passed in favour of the petitioner."

I have heard learned counsel for the parties. Carefully gone through the orders impugned passed by the trial court as well as by the revisional court.

On a complaint filed by non-petitioner No.1 Shyam Lal against the petitioner under Section 138 of the Negotiable Instruments Act, 1881, the trial court took the cognizance of the offence on 24.6.2004 against the petitioner and issued the process. The petitioner, in compliance of the process issued, appeared before the trial court and filed an application dated 15.3.2005 seeking quashing of the complaint on the ground that it has not been mentioned as to when the notice issued by the non-petitioner was received by the petitioner and therefore, the complaint be quashed.

By order dated 4.4.2005, the trial court dismissed the application on the ground that from the perusal of the document issued by postal authority it is clear that the notice

was delivered to the addressee on 26.5.2004. Counsel for the petitioner has also shown me the letter issued by Indian Postal Authority wherein it has been stated that the Transaction No.NATHDWARA dated 24.5.2004 of 1976 was settled with the following comment RL U/R has been delivered to the addressee on 26.5.2004.

The revisional court after considering the material before it came to the conclusion that this is a question of fact and has to be decided in trial and there being a prima-facie evidence by communication from Indian Postal Authority that the notice sent by the non-petitioner has been delivered to the petitioner on 26.5.2004 dismissed the revision.

Learned counsel for the petitioner has relied on a decision of Hon'ble Supreme Court in Shakti Travel & Tours Vs. State of Bihar and Anr., 2004-05 (Suppl.) Cr.L.R. (SC) 790 wherein the Apex Court quashed the complaint as not maintainable on the ground that in the complaint itself it has not been mentioned that the notice has been served.

In the complaint filed by the present non-petitioner, it nowhere appears that notice has not been served and therefore, the case relied on by the learned counsel for the petitioner is of no help to the petitioner since it turns on its own facts. In that case, even in the complaint it was made clear that

notice has not been served and therefore, the Apex Court quashed the proceedings. In the present case, the complainant specifically came with a case that notice has been served on the petitioner and there is evidence of postal authorities that notice has been served on the petitioner on 26.5.2004 and therefore, in my view both the courts below were justified in dismissing the application filed by the petitioner.

No case for quashing the complaint is made out. The petition is therefore, dismissed.

(H.R.PANWAR),J.

rp